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Twenty-ninth session

SUMMARY RECORD OF THE 601st MEETING

Held at Headquarters, New York,
on Monday, 10 June 1996, at 10 a.m.

Chairman: Mrs. PIAGGI de VANOSSI (Argentina)

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The meeting was called to order at 10.15 a.m.

ELECTRONIC DATA INTERCHANGE: DRAFT MODEL LAW; POSSIBLE FUTURE WORK (continued) (A/50/17; A/CN.9/421; A/CN.9/XXIX/CRP.3)

Article "x" (continued)

1. Mr. CHANDLER (United States of America) said that in proposing its two formulations of paragraph 3 of draft article "x" (A/CN.9/XXIX/CRP.3), his delegation had simply wished to caution users against allowing data messages to coexist with paper bills of lading. As the formulations of the paragraph proposed by other delegations appeared to entail unintended consequences for users, he suggested that the second United States formulation should be used; however, a new sentence reading "Any paper documents issued shall contain a statement of such determination." should be inserted between the existing first and second sentences.

2. Mr. LLOYD (Australia), Mr. ILLESCAS (Spain), Mr. RENGER (Germany) and Mr. SANDOVAL LÓPEZ (Chile) supported the proposal.

3. Ms. BAZAROVA (Russian Federation) requested clarification as to whether such a statement of determination applied only to the specific paper document it appeared in, or to all subsequent documents in a given transaction.

4. Mr. CHANDLER (United States of America) said in order to avoid duplication of documents, carriers and issuers of bills of lading would understand that such a statement would apply to all subsequent documents issued in the course of the transaction.

5. Mr. MASUD (Observer for Pakistan) suggested that for greater clarity, the new additional sentence just proposed by the United States representative should be replaced by the phrase "and the said document contains a statement of such determination".

6. Mr. CHOUKRI (Observer for Morocco) said that as proposed, the rule appeared to be concerned solely with the contract of carriage, and suggested that it should be made more general in scope.

7. Mr. LLOYD (Australia) said the wording suggested by the delegation of Pakistan would make the inclusion of such a statement a prerequisite for the validity of a paper document, and proposed instead that the phrase "in these circumstances" should be inserted after "Any paper documents issued" in the new additional sentence proposed by the United States representative.

8. The CHAIRMAN said there appeared to be a consensus on accepting the second formulation of paragraph 3 proposed by the United States, with final polishing to be performed by the drafting group.

9. Article "x", as amended, was adopted.

Possible future work

10. Mr. BURMAN (United States of America) suggested that the Commission should first take up his delegation's general proposal regarding the international transport of goods. There was a need for progress in the harmonization of transport law, and the Commission should address the topic in a context broad enough to include all its aspects. Before the establishment of a working group on the topic, however, adequate time should be allowed to permit countries and groups involved in the international commercial transport of goods to submit to the secretariat their views on what would constitute a core of common ground. The secretariat would then be able to provide the Commission with the information needed to evaluate the possibility of achieving greater harmonization. The Commission's close cooperation with all relevant governmental and non-governmental bodies was essential in that effort, as was the involvement of the trade, i.e., the shippers, carriers, insurers, terminal operators and others actually carrying on the international transport of goods.

11. Mr. CHANDLER (United States of America) said the lack of uniformity in the laws, customs and practices applicable to bills of lading in different countries could lead to misunderstandings and conflicts. Existing liability rules on the carriage of goods, such as the Hague-Visby Rules and the United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules), were inadequate because they allowed procedures concerning bills of lading to be determined by national laws. Moreover, current developments with respect to such rules were disjointed, and not all of them were positive. Thus, there was a need to harmonize the entire set of laws and practices concerning the carriage of goods. Since all of the Commission's working groups were currently occupied with other matters, his delegation was suggesting a "bottom-up" approach whereby interested parties would be invited to submit their ideas. Once that process had been completed, in one to three years, the secretariat could tie those proposals together and a working group on the subject could be established.

12. Mr. FALVEY (International Association of Ports and Harbors) said he fully supported the United States proposal. One important issue in that regard was multimodal transport, which, though technologically efficient, was hindered by the different liability regimes applicable to the different means of transport involved. It was important to harmonize and simplify those regimes to facilitate multimodal transport.

13. Mr. ABASCAL (Mexico) said the Working Group's deliberations on draft article "x" had demonstrated the urgency of dealing with issues concerning the transport of goods. He supported the proposal put forward by the United States.

14. Mr. MASUD (Observer for Pakistan) said existing instruments, such as the Hamburg Rules and the United Nations Convention on International Multimodal Transport of Goods, should serve as the starting-point for the Commission's harmonization efforts. For example, the Hamburg Rules, on the carriage of goods by sea, were consistent with the conventions on other means of transport, and helped to harmonize the different legal regimes for the transport of goods by various means. Instead of spending two years gathering opinions on the subject, the secretariat should begin its work immediately.

15. Mr. STURLESE (France) said that, although international rules on the transport of goods undoubtedly needed to be harmonized, modernized and simplified, a new international instrument would not necessarily achieve that goal. It might be preferable to encourage the many countries which had not yet ratified or implemented existing conventions to do so without delay. If the secretariat wished to take up the United States proposal, he would not object, but felt that it was premature to establish a working group on that topic.

16. Mr. VAN DER ZIEL (Observer for the Comité Maritime International) said he endorsed the United States proposal because there were many gaps in existing international instruments on the subject. As the United States delegation had pointed out, current conventions did not adequately deal with bills of lading themselves or the rights of the parties under bills of lading. The spread of electronic data interchange (EDI) in international trade and transport made it imperative to consider issues such as how to define the functions of bills of lading. Over the years, bills of lading had acquired new functions, all of which must be harmonized to ensure the success of EDI in the field of trade and transport.

17. Mr. RENGER (Germany) said he shared the French delegation's doubts about the utility of a new instrument to harmonize international transport law. The problem of the electronic transfer of rights was by no means limited to bills of lading or to transport law, and the discussions on article "x" had shown that it was premature to embark on further work before the facts and needs in that area were better understood. There were already many different liability regimes stemming from the application of various earlier attempts to harmonize laws and practices, so that conflicts between international conventions had become more problematic than conflicts between national laws. UNCITRAL must be careful not to add to the confusion.

18. Mr. ILLESCAS (Spain) said the lack of harmony in international law on the transport of goods stemmed from three types of situations: those where the various solutions established in international conventions conflicted with one another because no single formula was universally accepted; those where the relevant international instruments had never entered into force, as in the case of the United Nations Convention on International Multimodal Transport of Goods; and those where no attempt had ever been made to harmonize the relevant laws, as in the case of the rights of third parties and the use of data messages in the international transport of goods. Those three situations should not be dealt with as though they belonged to the same category. With respect to the instruments already in fore, UNCITRAL must be careful not to contradict itself by elaborating a new set of rules just after the entry into force of the Hamburg Rules. The issues in the second category might be worth exploring, and those in the third category could be addressed immediately. However, the United States proposal did not distinguish among the three situations, whose essential differences must be taken into account.

19. Ms. CRAGGS (United Kingdom) said she agreed with the French and German delegations that there was no need to begin the task of harmonization immediately. She was not aware of any major difficulties with the operation of the Hague-Visby Rules, which were the most widely applied regime in that area. Rather than begin work on a new instrument, the Commission should encourage more

countries to adopt the Hague-Visby Rules. The United Kingdom did not support the Hamburg Rules and would not ratify them unless a majority of its trading partners did so.

20. Mr. BURMAN (United States of America) said he agreed that there was no immediate need to establish a working group. However, the Commission could begin the process of inviting comments and proposals. If it then determined that there was sufficient potential for progress, the secretariat could prepare a study and a draft instrument. The United States proposal was based on extensive discussions with groups involved in the carriage of goods by sea. Merely emphasizing existing conventions was tantamount to admitting that no progress could be made, since it was clear that some of those conventions were unlikely to be widely ratified and would never cover a significant proportion of the goods transported worldwide. Moreover, it was important to involve commercial sectors in determining the possible bases for future work. His delegation's proposal would enable the Commission to examine in depth, at little cost, a field in which very little harmony had been achieved thus far.

The meeting was suspended at 11.40 a.m. and resumed at 12.15 p.m.

21. Mr. ABASCAL (Mexico) said his delegation could support the United States proposal on the understanding that the secretariat was simply authorized to initiate a study or to prepare a questionnaire requesting information from States or other interested parties. It should be made quite clear, however, that the Commission was not seeking to amend the Hamburg Rules, since that would have the effect of discouraging States from joining that regime.

22. Mr. CHANDLER (United States of America) said the aim of the exercise would be to see whether any consensus emerged; it would not work to the detriment of the Hamburg Rules. If in fact the approach was premature, that would become apparent. The work would not be done by the secretariat but would comprise submissions by interested parties. The reality was that in addition to there being several regimes, those regimes were being modified by States individually, adding to the confusion.

23. Ms. SABO (Observer for Canada) said the Commission should take account of the limited resources available to the secretariat, and of the fact that there were other topics worthy of consideration, such as rules on digital signatures. The Commission should also acknowledge the impact of the United States proposal on resources, and should be careful not to discourage States from becoming parties to existing instruments. Nevertheless her delegation could accept the United States proposal if those concerns could be accommodated.

24. Mr. VAN DER ZIEL (Observer for the Comité maritime international) said what was needed was not work on liability, which was covered by existing conventions, but, rather, work on the gaps existing in all of the current instruments. There was, for example, no harmonization in the area of the rights and obligations of shippers regarding whether a shipper retained any rights where those rights were transferred to a subsequent holder. A second area of concern was that of consignees and their possible obligations. There were recent signs of further fragmentation with regard to the situation of consignees, making harmonization

imperative. The Commission must, of course, allow commercial practice to evolve, but should not trail very far behind.

25. Ms. GUREYEVA (Russian Federation) welcomed the United States proposal, but noted the importance of prioritizing the future work of the Commission. In the first instance it would be preferable to conduct a study of current practice in various countries, and perhaps, as suggested by the representative of Mexico, a questionnaire could be sent to elicit relevant information. She also agreed with the observer for Canada that there were other issues requiring the Commission's attention.

26. Mr. LLOYD (Australia) said he supported the observer for Canada. While he had no objection to the United States proposal, there were other priorities, such as performance rules and digital signatures. There were already inconsistencies in the latter area and the Commission should combat the lack of harmonization. If the secretariat had adequate resources it could follow up on the United States proposal, but as a lower priority.

27. Ms. CRAGGS (United Kingdom) agreed with the Canadian and Australian delegations that the study proposed by the United States should be postponed until more pressing matters had been considered. The Commission should also be given a clear indication from the industry that such a study was necessary. The exercise would comprise a wide spectrum of activities and a large number of issues which would probably require the establishment of a number of working groups and the investment of a great deal of time by the secretariat. Furthermore, no resources were currently available.

28. Mr. BURMAN (United States of America) said that, while he shared the concerns expressed by the United Kingdom representative, the industry had made it abundantly clear that the study should not be delayed. Perhaps, as the Australian and Canadian delegations had suggested, the work should be undertaken but given low priority. At least that would initiate a flow of proposals and send a clear message to the industry that there was a forum willing to consider the topic at an appropriate time. He also believed that no work would be involved in the immediate term, as it would take the industry some time to collect its thoughts.

29. Ms. CRAGGS (United Kingdom) said she was not aware of any pressure from the industry to begin such a study. There was, however, no harm in soliciting suggestions on which areas to address. She wondered what "low priority" would mean in practice. If proposals were solicited, the secretariat must be prepared to work on them; it was not clear how much time and effort that would involve.

30. Ms. SABO (Observer for Canada) inquired whether the secretariat could provide an estimate of the time and work that would be required.

31. Mr. HERRMANN (Secretary of the Commission) said that "low priority" meant that harmonization would be considered after the conclusion of all items for which there were currently working groups, future work on Build-Operate-Transfer projects (BOT) and other items which might be considered more urgent by the Commission. The study might involve more work at the very beginning, as a questionnaire might have to be circulated. He assumed, however, that, if that

were the case, the Commission could benefit from the experience of the Comité maritime international which had sent a questionnaire on harmonization to international maritime law associations. It was hard to predict how much work would be required later on; that depended very much on the number and type of proposals submitted and on whether clarification had to be sought on the replies to the questionnaire.

32. He also wished to remind the Commission that the secretariat was operating on a very tight budget because of the financial crisis, and that its staff of five Professionals was not likely to change while there was a freeze on recruitment. The secretariat could send letters inviting proposals and give the Commission a progress report in approximately two years. The Commission might also limit its task by focusing on a few areas on which a consensus might be achieved rather than on the entire spectrum of activities.

33. Mr. LLOYD (Australia) suggested that, as a compromise, the report of the Commission could indicate that, at its next session, a decision would be taken as to whether resources were available to undertake a study on harmonization. That would reflect the importance which the Commission attached to the study without requiring it to begin any work in the current year.

34. Ms. SABO (Observer for Canada) noted that, in the project to develop a legal instrument relating to cross-border insolvency, the secretariat had collaborated with the International Association of Insolvency Practitioners, which had carried out most of the preparatory work of collecting information and identifying core areas. Perhaps the secretariat could lighten its workload by entering into a similar arrangement with an outside organization.

35. Mr. BURMAN (United States of America) supported the Canadian suggestion but said that the Australian proposal to mention the study in the Commission's report might not send a strong enough signal that the Commission was willing to serve as a forum for the study. It would be regrettable to miss an opportunity.

36. Ms. CRAGGS (United Kingdom) said the Canadian suggestion was acceptable on the clear understanding that any suggestion received by the Commission would be acted on in a timely fashion.

The meeting rose at 1.05 p.m.